



U.S. Citizenship
and Immigration
Services

FILE:

Office: VERMONT SERVICE CENTER

Date:

OCT 26 2004

IN RE:

Applicant:

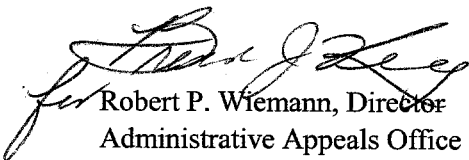
APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director denied the application because the applicant failed to establish she was eligible for late registration. The director also found that the applicant had failed to establish continuous residence in the United States during the requisite period.

On appeal, the applicant provides additional documentation.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the FEDERAL REGISTER, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) The applicant is a parolee or has a pending request for reparole; or

- (iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.
- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of conditions described in paragraph (f)(2) of this section.

The first issue raised by the director to be addressed in this proceeding is whether the applicant is eligible for late registration.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, that they have continuously resided in the United States since February 13, 2001, and that they have been continuously physically present in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

As stated in 8 C.F.R. § 244.1, "register" means "to properly file, with the director, a completed application with proper fee, for Temporary Protected Status during the registration period designated under section 244(b) of the Act."

The initial registration period for El Salvadorans was from March 9, 2001 through September 9, 2002. The record reflects that the applicant filed her application on November 15, 2002.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by CIS. 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his own statements. 8 C.F.R. § 244.9(b).

The record of proceeding confirms that the applicant filed her application for TPS on November 15, 2002, after the initial registration period had closed. To qualify for late registration, the applicant must provide evidence that during the initial registration period, she was either in a valid immigration status, had an application pending for relief from removal, was a parolee, or was the spouse or child of an alien currently eligible to be a TPS registrant, and she had filed an application for late registration within 60 days of the expiration or termination of the conditions described in 8 C.F.R. § 244.2(f)(2).

In a notice of intent to deny, dated March 5, 2003, the applicant was requested to submit evidence establishing her eligibility for late registration as set forth in 8 C.F.R. § 244.2(f)(2). The applicant was also requested to establish continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001.

The director determined that the applicant "did submit evidence of continuous physical presence in the United States from March 9, 2001, to the date of filing." However, the director found that the applicant failed to establish she was eligible for late registration and that she had continuously resided in the United States since February 13, 2001. Consequently, the director denied the application on July 24, 2003.

On appeal, the applicant submits a letter dated August 2, 2003, from [REDACTED] which states, in pertinent part, that:

I, [REDACTED] hereby certify that I am the owner of the building located at [REDACTED] East Boston, MA 02128. [sic] and Mr. [REDACTED] [sic] [REDACTED] has been living in this address since December 3, 1999, and after three months later his wife move [sic] with him on February 10, 2000.

The applicant also provided a copy of her "PARTIDA DE MATRIMONIO." The document is written in a foreign language and does not contain an English translation. 8 C.F.R. § 204.1(f)(3) states that foreign language documents must be accompanied by an English translation which has been certified by a competent translator.

The applicant has not submitted any evidence to establish that she has met any of the criteria for late registration described in 8 C.F.R. § 244.2(f)(2). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

The remaining issue in this proceeding is whether the applicant has established her continuous residence in the United States since February 13, 2001.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;

(2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and

(3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

As previously stated, the director denied the TPS application, as the applicant, in response to the Service's notice of intent to deny, dated March 5, 2003, failed to establish that she has continuously resided in the United States since February 13, 2001.

On appeal, the applicant submits the above-mentioned letter, dated August 2, 2003, from [REDACTED] which indicates that the applicant has resided in Mr. [REDACTED] building since February 10, 2000, and that she resides there with her husband, [REDACTED]. Also, as previously stated, the applicant provided a document titled "PARTIDA DE MATRIMONIO," which is in a foreign language and does not contain an English translation of the document. The documentation submitted by the applicant on appeal is not sufficient credible evidence to establish her continuous residence in the United States since February 13, 2001. She has, therefore, failed to establish that she has met the criteria described in 8 C.F.R. § 244.2(c). Consequently, the director's decision to deny the application for TPS on this ground will also be affirmed.

Beyond the decision of the director, the applicant has provided insufficient evidence to establish her continuous physical presence in the United States since March 9, 2001. The record merely consists of: a letter dated April 6, 2003, written in a foreign language and not accompanied by an English translation as required. See 8 C.F.R. § 204.1(f)(3); five generic rent receipts for the year 2000, which are dated prior to the qualifying timeframe, one generic rent receipt for January 2001, also dated prior to the qualifying timeframe; several affidavits from persons certifying that the applicant "lived for [sic] continuous period in the United States before and after February 13, 2001;" a copy of the applicant's El Salvadorian passport; a "TRANSLATION CERTIFICATION" of what is stated to be the applicant's "BIRTH CERTIFICATE;" however, the record does not contain a copy of the applicant's birth certificate; and, a letter from the applicant certifying that she has been in the United States since February 13, 2001. The affidavits and letters, without supporting documentary evidence such as school records, medical records, and bank statements, are not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The documentation contained in the record is not sufficient credible evidence to establish that the applicant has been continuously physically present in the United States since March 9, 2001. Therefore, the application must also be denied for this reason.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.